

**Deposition Designations for:
ROBERT D. NELSON
December 9, 1999**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

**Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co.
n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance
Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz
SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich
International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and
related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal
Belge SA (Orange)**

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in
Evidence
AO = Attorney Objection
BE = Best Evidence
Cum. = Cumulative
Ctr = Counter Designation
Ctr-Ctr = Counter-Counter
ET = Expert Testimony
F = Foundation
408 = Violation of FRE 408
H = Hearsay
IH - Incomplete Hypothetical**

**L = Leading
LA = Legal Argument
LC = Legal Conclusion
LPK - Lacks Personal Knowledge
LO = Seeking Legal Opinion
NT = Not Testimony
Obj: = Objection
R = Relevance
S = Speculative
UP = Unfairly Prejudicial under Rule 403
V = Vague**

1 IN THE DISTRICT COURT OF THE NINETEENTH
2 JUDICIAL DISTRICT FOR THE STATE OF MONTANA
3 IN AND FOR THE COUNTY OF LINCOLN

4 ROBERT D. NELSON and NETTIE)
5 JEAN NELSON, husband and wife,) Cause No. DV-98-107
6 Plaintiffs,)
7 vs)
8 W.R. GRACE & CO.-Conn, a)
9 Connecticut corporation, and)
10 DOES I-IV,)
11 Defendants.)
12

13 D E P O S I T I O N
14 O F

15 ROBERT D. NELSON
16 (On Behalf of the Defendant)

17
18
19 Taken at the Law Offices of
20 McGarvey, Heberling, Sullivan and McGarvey
21 745 Main Street
22 Kalispell, Montana
23 Thursday, December 9, 1999
24 9:00 a.m.

25 Reported by Debra M. Hedman, RPR, RMR, and Notary
Public for the State of Montana, Flathead County.

1 A Yes.

2 Q Also if you would wait until after I
3 finish my question before you begin your answer,
4 likewise that will help Deb take down everything
5 correctly and you and I won't be talking at the same
6 time. Okay?

7 A Yes.

8 Q Finally, and probably most important,
9 Mr. Nelson -- or Bob, you and I need to communicate
10 with one another. And so please don't be bashful.
11 If you don't completely understand a question that
12 I'm asking, go ahead and tell me that. I'll
13 rephrase it or otherwise change it so that you do
14 understand it so that you and I are confident that
15 you're answering the question that's being asked.
16 Okay?

17 A Yes.

Libby

18 Q Bob, how would you generally describe your
19 health as you sit here today?

20 A Oh, except for being short of breath, I'm
21 in good health. I just -- I can't breathe or walk
22 or anything like that.

23 Q Okay. And when did you first start
24 noticing having shortness of breath problems?

25 A About three or four years ago. We went

1 fishing. I was supposed to catch up to them and I
2 couldn't. I just -- And I never noticed it before
3 that because I was working all the time and --

4 Q And at that time, what did you attribute
5 that shortness of breath to? Anything?

6 A No, I just thought I was getting old.

7 Q Had you gained any weight or anything like
8 that?

9 A No. Not at that time, no.

10 Q How about your past smoking? Did you
11 think that the smoking had anything to do with it?

12 A I hadn't smoked for quite a while.
13 I think in '93 is the last time I ever had a
14 cigarette.

15 Q So you didn't think it was the past
16 smoking that had started causing the shortness of
17 breath?

18 A No, I never smoked that much.

Libby [

19 Q When you say that you suffer a shortness
20 of breath, is that a continual thing all day or only
21 when you're active?

22 A Well, when you do anything. I mean, even
23 going to the bathroom, in the back, you get -- you
24 can't walk very far.

25 Q Has it gotten progressively worse over the

Libby

1 last three or four years?

2 A Oh, yeah. Yes, sir.

3 Q Bob, could you put some kind of a

4 framework on that? I mean, has it gotten twice as

5 bad, three times as bad over the last three or four
6 years?

7 A I think it has gotten at least twice as
8 bad in the last three years.

9 Q Are you working anymore, Bob?

10 A No, sir.

11 Q Are you retired?

12 A Yes, sir.

13 Q How come you retired?

14 A I couldn't breathe any more.

15 Q And what were you doing?

16 A I was a tenant on a transfer station where
17 they dump their garage, picked it up and hauled it
18 out to the main landfill.

19 Q And what -- What does a tenant do?

20 A Just make sure that they get it in the
21 right dumpsters and they don't get it on the ground
22 and they don't throw stuff in there that they are
23 not supposed to.

24 Q Does it require much manual labor?

25 A No, it just -- You just copy down their

11

1 A There is nothing around there that you
2 wouldn't have to drive a hundred miles two ways
3 every day, so you just -- if you went to look for
4 a job, you would more than likely have to walk up
5 and down steps and stuff like that and that just
6 don't --

7 Q But have you looked for anything, Bob?

8 A No, I have had some jobs offered me, but
9 it was nothing that I could do.

10 Q What types of jobs were offered to you?

11 A Driving a truck and running front-end
12 loaders and stuff.

13 Q Why do you think you couldn't drive truck?

14 A For one thing it's quite a bit of manual
15 labor and turning your arms and -- You just don't
16 sit there. A lot of people think you do, but you
17 don't.

18 Q Would your answer be true with regard to a
19 front-end loader?

20 A Oh, yeah, it would be more on a front-end
21 loader. You're busy all the time in a front-end
22 loader.

Libby [

23 Q So if you're in a sedentary position, Bob,
24 and you're just moving your arms and feet, that
25 causes you shortness of breath also?

Libby

1 A Yes, sir.

2 Q Is there any particular time of the day,
3 Bob, that your shortness of breath seems to be worse
4 than others?

5 A No, it doesn't make any difference.

6 Q Does it -- It just gets worse with
7 increase of activity?

8 A Right.

9 Q But like, as you sit here right now, Bob,
10 you're not doing anything, you're sitting in a
11 chair, do you have a shortness of breath problem?

12 A I did when I first sat down and it's
13 getting to be all right now.

14 Q So if you had been sitting for a while,
15 you don't feel any kind of problem with shortness of
16 breath?

17 A Not as long as you're not doing anything.

18 Q Do you exercise at all?

19 A Not anymore.

20 Q When is the last time you had a regular
21 exercise type program that you did?

22 A Oh, when I was working for Morrison
23 Knutson out there at the mine.

24 Q What did you do then?

25 A I walked quite a bit.

1 Q Since five or six years ago when you
2 performed that miracle mechanic work, Bob, any other
3 vehicles you worked on besides your Jeep, your
4 wife's '77 LTD, your mobile home?

5 A No, I don't remember if -- If there was, I
6 don't -- My friend has got an International Scout,
7 but it usually runs pretty good. We had to change
8 the oil and stuff like that in it, but other than
9 that, it's just --

10 Q Okay. So Bob, you haven't worked
11 extensively on cars for about five or six years?

12 A No, no.

13 Q Bob, besides the dancing, fishing,
14 hunting, and working on cars, anything else that you
15 used to do that you can't do now?

16 A No, I just -- I used to be a pretty fair
17 carpenter, but I haven't did that for years. In
18 fact, I never liked doing it so I don't even mention
19 it. I just --

Libby

20 Q Okay. Bob, when did you work at the
21 Zonolite mine?

22 A When or where?

23 Q When?

24 A When? Boy, that is something I don't
25 remember too much about that -- that's -- I don't

Libby [

- 1 remember the dates. They got it wrote down --
- 2 Q Okay.
- 3 A -- at the office.
- 4 Q Okay. Do you remember who hired you?
- 5 A God, I should. No, sir, I don't remember
- 6 who it was.
- 7 Q Do you remember who your supervisor was
- 8 when you first started there?
- 9 A I think his name was Care.
- 10 Q Care?
- 11 A Yeah. I don't remember any more what his
- 12 first name was. God, that was a long time ago. No,
- 13 I don't. I remember when I got up into the mine
- 14 part, it was Pappy Welch was the foreman up there.
- 15 Q Pappy Welch?
- 16 A Yeah, that was what he -- I don't remember
- 17 what his first name was, but everybody called him
- 18 Pappy.
- 19 Q Was that a different person than Shorty
- 20 Welch?
- 21 A Yeah, Shorty Welch worked in the
- 22 warehouse.
- 23 Q But Pappy Welch wasn't your initial
- 24 supervisor?
- 25 A Not until I got up in the mine.

Libby

1 Q Where did you work at first?
2 A Clean-up down on the construction part
3 of it.
4 Q That wasn't in the dry mill?
5 A A lot of it was in the dry mill and very
6 little in the wet mill because it never got very
7 many spills in there.
8 Q So you would go in and clean up the
9 spills?
10 A Yes, sir.
11 Q Do you remember who you worked with when
12 you were working the clean-up with construction?
13 A Oh, man, there was so many of them that --
14 it was -- I don't remember. I just -- It was a lot
15 of people that worked there.
16 Q And were you working up there full-time?
17 A Yeah, when I first started it was
18 full-time and then I guess they laid me off -- I
19 guess. That was a long time ago.
20 Q You don't remember getting laid off?
21 A No. I --
22 Q Do you remember -- Well, never mind. When
23 you were working on the clean-up crew up there, with
24 construction, did you ever wear a respirator?
25 A No, hu-huh.

1 Q Did you ever see anyone else wear a
2 respirator?

3 A I don't remember ever seeing one.

4 Q Do you ever remember seeing a respirator
5 at any time up there --

6 A No, sir.

7 Q -- at the mine or the mill?

8 A No. I don't -- It just --

Libby

9 Q Do you remember, Bob, any other jobs you
10 had up there?

11 A Yeah, I worked in the test lab.

12 Q What did you do in the test lab?

13 A Once every hour you would go around and --
14 you had a bunch of trays that was about this big
15 around (indicating), about eight inches, and you go
16 around to different places in the dry mill and in
17 the wet mill and you picked up samples and then you
18 take them back to the lab.

19 And you had to run tests on them. And you
20 stick them in these big burners, you know, and they
21 would dry them out and pop the ore and see how much
22 percentage that was getting from the ore. If you
23 were lucky, the intercom worked and you called the
24 dry mill and the wet mill and you told them how to
25 set their machines. And if that wasn't working,

Libby

1 then you had to run back over there and tell them.

2 Q How long did you work in the test mill --
3 or test lab? I'm sorry.

4 A I think they sent -- about four and a
5 half, five months. I don't know.

6 Q When you were with the clean-up crew in
7 construction, did you work around a lot of dust?

8 A Well, yeah, if you was outside or inside
9 up there it was dusty.

10 Q Where was it most dusty, would you say?

11 A Around the dry mill.

12 Q Would that be in the dry mill?

13 A Yeah. Yes, sir.

14 Q Did you ever have trouble breathing in the
15 dry mill because of the dust?

16 A I don't remember. That just -- Hell, I
17 was in pretty good shape and I just -- I don't think
18 it bothered me, but they never said anything about
19 it, so --

20 Q You don't remember any discussion amongst
21 any of the employees about the dust?

22 A Oh, everybody was always hollering about
23 it when you had to go work in it, but there was
24 never anything done about it. Just the hollering.

25 Q Do you ever recall, Bob, complaining about

1 it that was going to hurt you.

2 Q Okay. And you never asked anybody about
3 that?

4 A I figured if it was something that was
5 going to kill me eventually, I would think somebody
6 would have said something about it, I thought.
7 Otherwise I would have damn sure not been up there.

Libby

8 Q Do you ever remember having a chest x-ray
9 taken when you were up there, Bob?

10 A I know I was supposed to have a chest
11 x-ray taken when I went to work up there, but I'm
12 sure I didn't. And then I think it was after that
13 that they send a bunch of us down to the hospital to
14 have chest x-rays, but I don't know whatever they
15 did with them.

16 Q Did you ever ask anybody why you were
17 having your chest x-rayed?

18 A Oh, yeah.

19 Q Who did you ask?

20 A The doctor, for one thing.

21 Q What did the doctor tell you?

22 A Well, they just -- they require it..

23 We got two hours off and we went and drank beer.

24 Q Did you ask why they required it?

25 A Yeah, but they -- You know, they just said

Libby

1 it was required and that was the end of it. I don't
2 even remember who the doctor was that authorized it
3 because he had to go to the hospital to have it
4 done.

5 Q Did you ask the doctor why it was
6 required?

7 A Oh, yeah.

8 Q And the doctor never told you, either?

9 A No. He said it was required and that was
10 it.

11 Q Did you ever ask anybody with W.R. Grace
12 or with the predecessor company?

13 A No, I don't -- I don't remember. Only
14 time of year you ever talk to anybody like that, if
15 you were into the office to pick up your check or
16 something, and you had to go into downtown and
17 usually you grabbed that when you come through the
18 door and out you went.

19 Ninty percent of the time the check was
20 always -- you know, when you got ready to go on the
21 bus, they always had them down there.

22 Q Okay. Did you ever see, Bob, anyone from
23 the State there to investigate the mine?

24 A Never did that I ever remember, no.

25 Q Did you ever see any construction or other

1 work performed up there in an effort to reduce the
2 dust conditions?

3 A Not at that time, no.

4 Q Did you ever hear of anyone getting sick
5 because of the dust?

6 A No, I never -- I never paid any attention
7 to that. I just --

8 Q Okay. You used to take the bus up there?

9 A Yes.

10 Q And the bus home?

11 A Yes. Down to the parking lot in town.

12 Q And you don't recall any of the employees
13 ever talking about anybody getting sick up there
14 because of the dust?

15 A No, I don't recall anybody saying anything
16 about it.

17 Q You knew Shorty Welch?

18 A Yes, sir.

19 Q Did you know that he was suffering from
20 lung problems when you were working up there?

21 A No, I didn't. I never associated with him
22 that much. I think he worked warehouse.

23 Q What else did you do up there, Bob?

24 A Oh, I was a dump man and then I drove a
25 Euc up there.

Libby

Libby

1 Q How long were you a dump man?

2 A I don't remember, but it was -- it wasn't
3 very long until they was -- they was always
4 shorthanded on the Eucs. They just put me on a --
5 They found out I could drive a Euc and so they stuck
6 me in that.

7 Q Was there much dust in your work as a Euc
8 driver?

9 A Oh, yes. Especially if it hadn't rained
10 for a while.

11 Q Was that mostly at the transfer points?

12 A Well, whenever they load you and whenever
13 you dump and driving up and down the roads.

14 Q Bob, was the dust ever so bad that you
15 used a handkerchief or anything to put over your
16 mouth and nose?

17 A I don't think so. Some of them Eucs, they
18 had windows that you could shut them and --

19 Q How about when you were working up in
20 clean-up with construction in the dry mill? Did you
21 ever have to put anything over your mouth?

22 A No, you just went in there and you got it
23 done and got the hell out of there, and that's --
24 but I don't remember ever putting no handkerchief or
25 anything over my face.

Libby

1 Q Did you ever have trouble seeing in the
2 dry mill because of the dust?

3 A Yeah. Especially in the top floor of the
4 dry mill. You were lucky if you could find a light
5 bulb up there, when it was on.

6 Q Earlier, Bob, I think you said that some
7 of the guys would talk amongst themselves about the
8 dusty conditions? They were complaining about it
9 when they were going to have to work in those; is
10 that right?

11 A No, if they said something about it being
12 dusty, I never heard them, but they -- I don't
13 remember anybody ever talking about dust. Just that
14 they -- It was dusty and you just had to work in it.
15 And that was --

16 Q Where did you eat lunch?

17 A Well, when I was in clean-up we used to
18 eat lunch in the lunch room, but any other time I
19 always ate lunch wherever my job was.

20 Q And you never saw any respirators hanging
21 from nails in the lunch room?

22 A No, I don't remember that. They might
23 have been, but I never seen them.

24 Q Okay.

25 A I sure didn't. The only thing I remember

1 A From Dr. Whitehouse.

2 Q And why did you go see Dr. Whitehouse?

3 A Well, because my chest hurt and I was so
4 short of breath I couldn't do nothing and I didn't
5 think I had it and I just -- Well, I talked to Roger
6 down there. He wanted me to be a witness for
7 somebody. And he said, if I had, you know, some --
8 thought I had something like that, that maybe I
9 should go see --

10 No, I don't believe he said that, but I
11 think my sister-in-law said I should go see
12 Whitehouse. Everybody was going over to him. He
13 was an -- an ex -- whatever you call that. He was
14 entitled to tell you that. And we went over to his
15 office and they took chest x-rays, and he said,
16 Yeah, you got it. You got it in both lungs.

17 Q You mentioned that your chest hurt?

18 A Yeah, when you cough, boy, it just felt
19 like somebody was squashing you.

20 Q So it wasn't a steady ache, it was just
21 when you cough?

22 A Just when you cough a lot.

23 Q So your sister is the one who recommended
24 that you go talk to Dr. Whitehouse?

25 A Sister-in-law.

Arrowood
obj:
H, F

Libby

Libby

1 Q Sister-in-law.

2 A Yeah.

3 Q Who is her husband?

4 A My brother. He has passed away now.

5 Q What was his name?

6 A Phillip.

7 Q So you traveled all the way up to Spokane
8 from Arizona to see Dr. Whitehouse?

9 A Yeah, we was going to Forks, Washington,
10 so we made an appointment to stop and see him on the
11 way over.

12 Q Did you ever consider seeing a
13 pulmonologist in Phoenix?

14 A I don't even know one.

15 Q How much time passed between the
16 conversation with your sister where she recommended
17 you go see Dr. Whitehouse and then actually getting
18 up to Spokane to see him?

19 A Oh, I don't know. Probably a week and a
20 half.

21 Q Prior to seeing Dr. Whitehouse, had you
22 all ready talked to Roger about possibly being a
23 witness?

24 A Oh, yeah. Yes.

Libby

25 Q How many times have you seen

62.

Libby

1 Dr. Whitehouse?
2 A Three.
3 Q Three times in the last three years?
4 A No, four times in the last three years.
5 Four times, yeah. I just seen him a week ago -- or
6 last -- just the week before we got here.
7 Q Okay. When you last saw him, what did
8 he -- did he tell you that your condition is getting
9 worse, better, same?
10 A Exact words he said, It's not getting any
11 better.
12 Q Did he say it's getting any worse?
13 A Yeah.
14 Q He did, just last week?
15 A Yep.
16 Q And is that when he told you that he
17 thought you had five to ten years to live?
18 A Yeah, I think that was in the report he
19 was -- he had out there.
20 Q Have you read his reports?
21 A No, I --
22 Q So you don't recall him ever telling you
23 five to ten years?
24 A No, I think I read it on his desk or
25 something. I'm not too sure. I don't remember.

Arrowood
obj:
H; F